



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Louisville Lumber & Millwork, Inc.
File: B-232592.2
Date: November 15, 1988

DIGEST

1. Where a solicitation contains the standard tax clause providing that the bid price includes all applicable federal, state and local taxes, a bid that is qualified with the language "no tax included" with no indication elsewhere in the bid as to what tax in what amount is excluded, is properly rejected as nonresponsive even where no state sales tax is applicable because the submission of a bid on a tax-excluded basis is viewed as evidence of the bidder's belief, absent definite information to the contrary, that taxes may be assessed, and of the bidder's unwillingness to assume payment of such taxes at the bid price.
2. An otherwise successful bid may be modified at any time to make its terms more favorable to the government.

DECISION

Louisville Lumber & Millwork, Inc. protests the rejection of the bid of its subsidiary, Architectural Sales of Louisville, and the award of a contract to Sowder & Bailey Contracting, Inc. (Sowder) under invitation for bids (IFB) No. DABT23-88-B-0070 issued by the Department of the Army for renovations of the interior of a building at Fort Knox, Kentucky. The protester claims that its low bid was improperly rejected as nonresponsive.

We dismiss the protest.

Bids were opened on September 8, 1988 with Architectural Sales the apparent low bidder. Sowder submitted the only other bid. On October 3, 1988, Architectural Sales was informed by the Army that its bid was rejected as nonresponsive because it qualified its bid by inserting the phrase "no tax included." The IFB included the standard tax clause which provides that the contract price "includes all

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applicable Federal, State and local taxes and duties." Federal Acquisition Regulation (FAR) § 52.229-3.

It is essentially the protester's position that because the contract is not subject to Kentucky sales tax, its qualification was meaningless. In any event, Architectural Sales points out that even if the 5 percent sales tax were added to its bid, it would still be lower than the only other bid received. We find no merit to the protest.

Unless otherwise specified in the IFB, the inclusion of the standard tax clause constitutes notice to all bidders that bids will be evaluated on a tax-included basis. Thus the submission of a bid on a tax-excluded basis is viewed as evidence of the bidder's belief, absent definite information to the contrary, that taxes may be assessed, and of his unwillingness to assume payment of such taxes at the bid price. Nevertheless, the bid still may be considered if the class and amount of the tax are specified elsewhere in the bid, because such information permits all bids to be evaluated on an equal basis, but absent such information, the bid must be considered to be nonresponsive because it cannot be evaluated with other bids on an equal basis. The Bruce Corp., B-231171, June 24, 1988, 88-1 CPD ¶ 610.

The phrase "no tax included" does not specify the class and amount of tax that is excluded, and since other taxes besides sales tax may be applicable, the bid is ambiguous as to what taxes are in fact excluded from the price bid. The bid was therefore properly rejected as nonresponsive.

The protester also contends that it was improper to permit the only other bidder to lower its bid, and also suggests that it should have been permitted to delete the qualifying language from its bid. First we point out that a nonresponsive bid may not be corrected after bid opening to make it responsive. Coopervision, Inc., B-231746, June 28, 1988, 88-1 CPD ¶ 616. Next we note that an otherwise successful bid can always be modified after bid opening to make its terms more favorable to the government. FAR § 14.304-1. Since the protester's bid was properly rejected as nonresponsive, the only other remaining bid was "otherwise successful," because it was in line for award, even without the modification lowering the price.

The protest is dismissed.

Ronald Berger

Ronald Berger
Associate General Counsel